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*Counsel for Defendants*

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON AT PORTLAND

**LNG DEVELOPMENT COMPANY,  
LLC d/b/a OREGON LNG,**

Plaintiff,

v.

**PORT OF ASTORIA**, an Oregon Port; **DAN  
HESS**; an individual, **LARRY PFUND**; an  
individual, **WILLIAM HUNSINGER**, an  
individual, **JACK BLAND**, an individual,  
and **FLOYD HOLCOM**, an individual,

Defendants.

Case No. 3:09-CV-847 JE

DEFENDANTS' MOTION FOR  
EXTENSION OF TIME TO FILE NOTICE  
OF APPEAL

STATEMENT OF NON-OPPOSITION

Pursuant to FRAP 4(a)(5), Defendants move to extend the time to file a notice of appeal from the Court's March 11, 2010 order granting Plaintiff's motion for preliminary injunction from April 10, 2010 to April 20, 2010. At a status conference with Settlement Judge Ashmanskas on April 6, 2010, counsel for Plaintiff indicated that Plaintiff does not oppose the motion. In support of the motion, Defendants submit the following pursuant to FRAP 4(a)(5).

FRAP 4(a)(5)(A)(i) provides that the court may extend the time to file a notice of appeal if a party so moves no later than 30 days after the time prescribed by FRAP 4(a) expires. The court granted the preliminary injunction on March 11, 2010, which was 26 days ago. This motion is thus timely under the rule.

FRAP 4(a)(5)(A)(ii) requires the moving party to show either excusable neglect or good cause. Here, good cause exists for two reasons. The first reason is that the extension will allow the parties to finish negotiating, approving, and executing a settlement agreement. The parties attended a settlement conference with Judge Ashmanskas on March 26, and they have exchanged drafts of a written agreement. Judge Ashmanskas has scheduled a status conference for Monday, April 12, and will further assist the parties' negotiations, if necessary. An agreement must be approved by Plaintiff's Board of Directors, which Plaintiff's president has indicated can be obtained readily. The Port Commission must also approve an agreement at a duly-noticed meeting. The Port Commission holds its regularly-scheduled meetings on Tuesday, and Defendants anticipate that an agreement can be considered next week.

The second reason is that the parties agree that the settlement will be contingent on the approval by the State of Oregon Department of State Lands of the renewal of the Upland Lease Agreement (DSL No. 26311LE) dated November 1, 2004. In compliance with the preliminary injunction, the Port requested DSL to renew that lease on or about March 22, 2010. While the State has not stated a deadline for making a decision, Defendants believe that the State will make its decision within the requested extension.

For these reasons, Defendants submit that the extension can be granted for good cause. At the April 6<sup>th</sup> status conference, Judge Ashmanskas indicated his support for an extension.

FRAP 4(a)(5)(C) limits the length of an extension to no later than 30 days after the prescribed time for filing a notice of appeal or 14 days after the order granting the motion for extension. Here, the requested extension is only 10 days and, thus, would not violate the rule.

DATED this 6<sup>th</sup> day of April, 2010.

LANDYE BENNETT BLUMSTEIN LLP

By: 

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